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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Competitive Telecommunications)
Association, Florida Competitive)
Carriers Association, and Southeastern)
Competitive Carriers Association)
) CC Docket No. 98-39
Petition on Defining Certain Incumbent)
LEC Affiliates As Successors, Assigns, or)
Comparable Carriers Under Section 251(h))
of the Communications Act)

**COMMENTS IN SUPPORT BY THE ASSOCIATION FOR
LOCAL TELECOMMUNICATIONS SERVICES**

Pursuant to the Public Notice released April 1, 1998 (DA 98-627), the Association for Local Telecommunications Services ("ALTS") hereby files these comments in support of the petition of CompTel, FCCA, and SECCA concerning: "the regulatory status of affiliates of incumbent local exchange carriers ..." ("Section 251(h) Petition").

I. THE SECTION 251(h) PETITION SHOULD BE GRANTED.

ALTS strongly supports the Section 251(h) petition. CompTel, FCCA, and SCCA make a persuasive showing that incumbent carriers providing wireline local exchange service within their service territory by means of affiliates using: "the same or a similar brand name and common financial resources, personnel, and/or other resources of the ILEC or another corporate

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affiliate" are successors-in-interest to the ILEC, and thus should be subject to similar statutory obligations (Section 251(h) Petition at 1).

Failure to approve the petition promptly would create serious opportunities for incumbents to sabotage their important pro-competitive obligations under the 1996 Act. Petitioners correctly note that the use of non-section 272 compliant subsidiaries would permit wholesale evasion of the resale obligation under section 251(c)(4), citing to BellSouth's attempts to undercut the availability of resale (Petition at 6, referencing Application of BellSouth Corp. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services In South Carolina, CC Docket No. 97-206 (released December 24, 1998)).

Beyond the dangers posed to resale, non-compliant ILEC in-region subsidiaries providing local wireline services can be manipulated to evade virtually every aspect of an incumbent's obligations under section 251, including the provision of unbundled network elements under section 251(c)(3).

The general problem of the specific legal obligations that do and should attach to in-region telecom affiliates of incumbents is also currently being addressed in the more narrow context of three RBOC petitions which seek to provide advanced data services under section 706. Petition of Bell Atlantic

Corporation for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-11, et al. ("Section 706 Proceeding"). While issues arising from the RBOCs' efforts to use section 706 to escape their section 251(c) and 271-272 obligations may be more focused than the problems addressed in the Section 251(h) Petition, a short discussion of the legal issues in the section 706 case will underscore the need for thoughtful action on the present petition.

As a threshold matter, the RBOCs make a fundamental mistake in the Section 706 proceeding in assuming that section 706 permits the Commission to remove the legal requirements of sections 271 and 272.¹ See, e.g., GTE Comments filed April 6, 1998, at 8: "... GTE does not believe that the statutory requirements of Sections 271 and 272 can be indirectly overruled through forbearance." Furthermore, the RBOCs effectively admit that separate data networks could and would carry interLATA voice traffic.² Accordingly, creation of an in-region affiliate under

¹ As explained in ALTS' initial comments in CC Docket No. 98-11, section 10(c) prohibits any forbearance from enforcement of sections 251(c) and 271. Because compliance with section 272 is expressly incorporated into section 271 (see section 271(d)(3)(B): "the requested authorization will be carried out in accordance with the requirements of section 272"), the Commission also lacks any authority to forbear from enforcing section 272.

² See Jim Olson's interview with Jim Young, Vice President and General Counsel of Bell Atlantic, CCH Power and Telecom Law, March/April 1998, at 32: "OLSON: But if Internet protocol telephony becomes practical, could you migrate even the voice traffic onto this? YOUNG: The honest answer is 'yes,' but that's
(continued...)

section 706 could only be predicated on prior compliance with sections 271 and 272.

A second legal barrier to the RBOCs' section 706 request is posed by the fact that the Fifth Report and Order in Policy and Rules Concerning Rates for Competitive Common Carriers Services and Facilities Authorizations Therefor, 98 FCC2d 1191 (1984), which both U S WEST and Ameritech offer as their model for an in-region affiliate, addressed a situation where incumbents provide out-of-region services. Obviously, there is no way the Commission's conclusions in the Fifth Report can imported into an in-region context without totally invalidating its factual and logical foundation.

The section 706 proceeding also underscores the need for the Commission to fully understand the relationship between the ILEC and its in-region affiliates either before granting section 706 relief, or before declining to treat an ILEC affiliate as a successor-in-interest. Minimal specifications in the case of an advanced data affiliate would have to include:

- A list of all current and planned assets, divided into advanced data assets and all other assets, and also the personnel and operations supporting these assets, divided into the same categories.
- An explanation of the methodology for determining whether new asset acquisitions constitute "advanced data services."

²(...continued)
true of high speed networks today" (emphasis supplied).

- A complete description of how these assets, personnel and support functions would be separated from the remaining ILEC functions.
- A complete description of how the assets and expenses of the separated advanced data subsidiary would be removed from separations, price caps, and universal service modeling.
- An explanation of how the advanced data subsidiary would comply with all the requirements of the Fifth Report and Order in Policy and Rules Concerning Rates for Competitive Common Carriers Services and Facilities Authorizations Therefor, 98 FCC2d 1191 (1984).

Given that the RBOCs' efforts to end-run sections 251(c) and 271-272 via their section 706 are clearly doomed to failure, it seems likely they will increasingly turn to precisely the sort of evasions set forth by CompTel, FCCA, and SCCA. Accordingly, the Commission should act quickly on their Section 251(h) Petition.

II. THE COMMISSION SHOULD CREATE A PRESUMPTION THAT ANY NON-COMPLIANT IN-REGION ILEC AFFILIATE PROVIDING WIRELINE LOCAL EXCHANGE SERVICE IS A SECTION 251(h) AFFILIATE.

Petitioners are clearly correct that in-region affiliates of ILECs providing wireline services should automatically be treated as section 251(h) affiliates where they use the brand name and financial, personnel, or other resources of the incumbent. ALTS respectfully suggests that any in-region ILEC affiliate providing local wireline services could engage in considerable mischief even without using the name or resources of a regulated affiliate.³ Where the regulated incumbent is owned by an

³ Compare Petitioners' n. 25, in which they request a similar assumption.

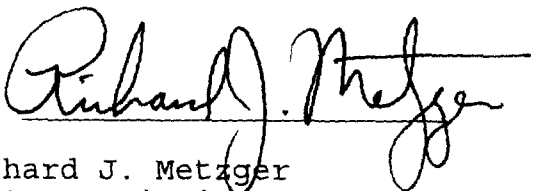
unregulated holding company, that holding company can provide an instant "AAA" credit rating to such a company, as well as secret orders to the regulated affiliate to give its CLEC as much undetected preferential treatment as possible.

Section 251(h) (2) is plainly a broad prophylactic statute that fully empowers the Commission to head off such blatant manipulations. ALTS respectfully asks that the Commission create a rebuttable presumption by rule under section 251(h) (2) that all in-region ILEC affiliates providing local wireline services are section 251(h) successors-in-interest.

CONCLUSION

For the foregoing reasons, ALTS asks that the Commission grant the Section 251(h) petition, and also create a rebuttable presumption that all in-region ILEC affiliates providing local wireline services are section 251(h) successors-in-interest.

Respectfully submitted,

By: 

Richard J. Metzger
Emily M. Williams
Association for Local
Telecommunications Services
888 17 Street, N.W., Suite 900
Washington, D.C. 20006
(202)969-2583

May 1, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of May, 1998, copies of the foregoing Comments of the Association for Local Telecommunications Services were served via first class mail, postage prepaid, or by hand as indicated to the parties listed below.


Emily M. Williams

Magalie Roman Salas*
Secretary
Federal Communications Comm'n
1919 M Street, N.W.
Washington, D.C. 200554

Richard Metzger*
Chief, Common Carrier Bureau
Federal Communications Comm'n
1919 M Street, N.W.
Washington, D.C. 20554

Janice Myles*
Room 544
Federal Communications Comm'n
1919 M Street, N.W.
Washington, D.C. 20554

David L. Sieradzki
Hogan & Hartson
555 Thirteenth St., NW
Washington, D.C. 20004

ITS*
1231 20th Street, NW.
Washington, D.C. 20036

* by hand